

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
ASSIGNED ON BRIEFS JUNE 12, 2008

JEANNETTE BOYER DECENT v. TIMOTHY WILLIAM DECENT

**Direct Appeal from the Chancery Court for Maury County
No. 04-241 Stella Hargrove, Chancellor**

No. M2007-01979-COA-R3-CV - Filed October 15, 2008

In this appeal, we are asked to determine whether the chancery court erred in finding that Husband was not entitled to the return of or reimbursement for certain items he claimed as separate personal property. The chancery court found that Husband did not carry his burden of proving that Wife intentionally disposed of his personal property, as it questioned Husband's testimony concerning both the existence and value of Husband's claimed separate property. Thus, the trial court ordered that each party retain as his or her sole and separate property all remaining personal property currently in his or her possession. We affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

ALAN E. HIGHERS, P.J., W.S., delivered the opinion of the court, in which DAVID R. FARMER, J., and HOLLY M. KIRBY, J., joined.

S. Jason Whatley, Columbia, TN, for Appellant

Wesley Mack Bryant, Columbia, TN, for Appellee

OPINION

I. FACTS & PROCEDURAL HISTORY

After meeting over the internet, Appellant, Timothy William Decent, (“Husband”) moved from Michigan to Tennessee to live with Appellee, Jeannette Boyer Decent, (“Wife”) (collectively, “the Parties”) in her home (“marital residence” or “Wife’s property”). The Parties lived together for approximately two years before they were married on December 28, 2000. On or about April 12, 2004, Wife informed Husband of her intention to seek a divorce. Wife claimed Husband became verbally abusive and threatened both her and her children from a previous marriage. The following day, Wife filed a Complaint for Divorce, and Motions for Restraining Order and Pendente Lite Relief in the Maury County, Tennessee, Chancery Court. On April 15, 2004, the Chancery Court issued a Restraining Order against Husband, restraining and enjoining him from, among other things, coming about Wife or her children. On May 6, 2004, the Chancery Court issued an Order concerning Wife’s Motion for Pendente Lite Relief, ordering that Wife have exclusive use and control of the marital residence and be the only party allowed to withdraw funds from the joint accounts, requiring Wife to transfer to Husband his personal belongings, and declaring that Husband was not entitled to temporary spousal support.

Husband, on May 17, 2004, filed a Petition stating that Wife had failed to comply with the court’s orders. Specifically, he claimed that Wife had refused to allow him to enter the marital residence to obtain his clothing and tools of his trade and to conduct an inventory of his personal property. Additionally, Husband contended that Wife had sold both marital and his separate property, had hidden some of his separate property in a storage shed, and had spent marital funds for items other than direct necessities, in contravention of the court’s orders. After Husband retained counsel, the Petition was continued indefinitely.

On May 19, 2004, Wife filed a Motion for Contempt stating that on or about April 28, 2004, while the Restraining Order was in place, Husband entered Wife’s property “and absconded various personal items including, but not limited to, the Plaintiff’s (Wife’s) Will, financial information, animal certifications and various tools and equipment.” Additionally, Wife alleged Husband entered Wife’s property on or about May 10, 2004, though no items were taken.

Husband filed an Answer and Counter-Complaint on May 25, 2004. After discovery and settlement negotiations, the Parties were divorced upon stipulated grounds on November 24, 2004.¹ However, because more time was needed to inventory the Parties’ property, the division of the marital estate was reserved for a later hearing.

On June 26, 2006, the Chancery Court heard the Parties’ case and considered the issues of identification and valuation of separate and marital property and court costs. The Chancery Court issued a Memorandum and Findings of Fact and Conclusions of Law, filed July 5, 2006, declaring

¹ The Final Decree of Divorce was filed July 21, 2006, *nunc pro tunc* to November 24, 2004.

it “ha[d] considerable difficulty with Husband’s testimony that any such personal property ever existed . . . [and] even greater difficulty with the fair market values suggested by Husband. Accordingly, the Court [found] that Husband ha[d] not carried his burden of proof that Wife ha[d] ‘intentionally disposed of his stuff.’” Thus, the trial court ordered that each Party retain the property currently in his or her possession as his or her sole and separate property and taxed court costs equally to the Parties. An Order was filed July 21, 2006, reflecting the same.

On August 21, 2006, Husband filed a Motion to Alter or Amend the July 21, 2006 Order claiming that because Wife had not disputed the existence of Husband’s separate property and Husband’s veracity had not been questioned, the Chancery Court should amend its Order to show that such items did exist. However, Husband caused his Motion to be stricken and an Order was entered August 1, 2007, reflecting such. This appeal followed.

II. ISSUES PRESENTED

Appellant has timely filed his notice of appeal and presents the following issue for review:

1. Whether evidence entered at the Parties’ divorce trial preponderated against the Chancery Court’s finding that Husband was not entitled to the return of or reimbursement for certain separate property claimed by Husband and that the property currently in each party’s possession should be retained by that Party as his or her separate property.

For the following reasons, we affirm the decision of the Chancery Court.

III. STANDARD OF REVIEW

On appeal, a trial court’s factual findings are presumed to be correct, and we will not overturn those factual findings unless the evidence preponderates against them. Tenn. R. App. P. 13(d) (2006); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). For the evidence to preponderate against a trial court’s finding of fact, it must support another finding of fact with greater convincing effect. *Watson v. Watson*, 196 S.W.3d 695, 701 (Tenn. Ct. App. 2005) (citing *Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *The Realty Shop, Inc. v. R.R. Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999)). We review a trial court’s conclusions of law under a *de novo* standard upon the record with no presumption of correctness. *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993) (citing *Estate of Adkins v. White Consol. Indus., Inc.*, 788 S.W.2d 815, 817 (Tenn. Ct. App. 1989)).

IV. DISCUSSION

On appeal, Husband asserts that the trial court erred when it ordered that the property currently in each Party’s possession should remain or become that Party’s sole and separate property. More specifically, Husband contends that the evidence submitted before the trial court preponderated against its finding that the separate property claimed by Husband did not exist and thus, that

Husband was not entitled to have such property returned or receive reimbursement for its value. We address this contention below.

Tennessee is a “dual property” jurisdiction; thus, before a trial court can divide a marital estate it must first classify the parties’ property as either separate or marital. *Wade v. Wade*, 897 S.W.2d 702, 713 (Tenn. Ct. App. 1994) (citing *Batson v. Batson*, 769 S.W.2d 849, 856 (Tenn. Ct. App. 1988)). Tennessee Code Annotated section 36-4-121 provides the definitions of separate and marital property and also sets forth the factors a court must consider in equitably dividing the parties’ marital property. **Tenn. Code Ann. § 36-4-121 (2005)**. In this case, the trial court, after applying the relevant factors, found that the Parties’ marital property had been equitably divided. Thus, each party was allowed to retain the marital property currently in his or her possession.²

Concerning the Parties’ separate property, the trial court stated:

The Court has considerable difficulty with Husband’s testimony that any such personal ever existed. The Court has even greater difficulty with the fair market values suggested by Husband. Accordingly, the Court finds that Husband has not carried his burden of proof that Wife has “intentionally disposed of his stuff.” Each party will retain as their sole and separate property all remaining personal property currently in their possession.

Trial courts are given much discretion when classifying and dividing a marital estate, and their decisions are accorded much weight on appeal. *Galligan v. Galligan*, No. M2006-00833-COA-R3-CV, 2007 WL 2295999, at *5 (Tenn. Ct. App. Aug. 10, 2007) (citing *Sullivan v. Sullivan*, 107 S.W.3d 507, 512 (Tenn. Ct. App. 2002)). Thus, unless the trial court’s decision “is contrary to the preponderance of the evidence or is based on an error of law, we will not interfere with the decision on appeal.” *Id.* (citing *Sullivan*, 107 S.W.3d at 512).

Likewise, a trial court’s credibility determinations are accorded deference, and we cannot reverse “[a] trial court’s credibility determinations regarding the credibility of the witnesses . . . absent clear and convincing evidence to the contrary.” *Cartwright v. Cartwright*, No. W2005-02759-COA-R3-CV, 2007 WL 258315, at *10 (Tenn. Ct. App. Jan. 31, 2007) (citing *Stinson v. Stinson*, 161 S.W.3d 438, 440-42 (Tenn. Ct. App. 2004)).

In determining whether the evidence preponderates in favor of Husband, we must consider the evidence presented in the record. At trial, Husband submitted an inventory (“Exhibit A”) of property he claimed to be his personal, separate property. The inventory included approximately 166 items, which Husband initially valued at \$75,527.67, but later reduced to \$50,000.00. In her Responses to Defendant’s First Set of Interrogatories and Request for Production of Documents

² Husband does not challenge the trial court’s classification or distribution of marital property. Thus, we will not address the correctness of the trial court’s findings concerning the Parties’ marital property.

(“Response”), Wife stated that “[a]ll items listed on Exhibit A of Defendant’s discovery requests are believed to be either in the possession of the Defendant or I don’t know where they are.” Wife then further stated that the items listed in Exhibit A were Husband’s separate property, except for certain items that she specifically addressed. Those items specifically addressed included twenty-five items, the existence of which, Wife denied; four items, which Wife stated she depleted or disposed of; one item she claimed as her separate property; and one item which she acknowledged was Husband’s separate property and was still located at the marital residence.

Additionally, Husband submitted Exhibits B and C before the trial court providing an inventory of Wife’s personal property and the Parties’ marital property, respectively. Husband valued the items listed in Exhibit B at \$305,155.00 and Exhibit C at \$366,167.98.³

In support of his claim that the trial court had no basis for finding some items claimed as his separate property did not exist, Husband’s Brief highlights four “important points of evidence.” First, Husband states that he “was forced to leave the marital residence with only a few personal effects[.]” although the Parties agreed that he brought numerous separate property items when he moved to Tennessee to live with Wife. Additionally, Husband points out that the Parties agree that Husband’s personal property was moved to Tennessee via two trips of a fully-loaded twenty-two foot flatbed trailer, two trips of a fully-loaded four foot by six foot utility trailer, one trip of a horse trailer, and one trip of a twenty foot moving van, the fullness of which is contested. Second, Husband cites as preponderating evidence that, although he brought much separate property from Michigan, he has only recovered “one pickup truck load of miscellaneous items” and property Wife placed in a storage unit. Next, Husband claims that because Wife’s Response only denied the existence of twenty-five of the 166 items, listed in Exhibit A, that the trial court had no basis for finding the remaining items did not exist. Finally, Husband points to the photographs of a storage unit, Exhibit 2, where Wife placed, and Husband was able to recover, some of Husband’s separate property. Husband claims these photos show Wife’s lack of care in handling and general disregard for Husband’s separate property.

After considering the evidence presented in the record, we find that such evidence does not preponderate against the trial court’s findings. First, Husband’s Exhibit A provides only an unsubstantiated list of items he claims to have owned. Because the trial court chose to disbelieve Husband’s testimony that such property ever existed, we are bound by that decision in the absence of clear and convincing contrary evidence. *See Cartwright*, 2007 WL 258315, at *10 (citing *Stinson*, 161 S.W.3d at 440-41). Wife’s Response provides no such contrary evidence. Wife’s statement that “[a]ll items listed on Exhibit A of Defendant’s discovery requests are believed to be either in the possession of the Defendant or I don’t know where they are” is not inconsistent with the trial court’s finding that “Husband has not carried his burden of proof that Wife has ‘intentionally disposed of his stuff.’” Even if Wife’s Response is taken as an admission that certain items did exist, it does not

³ Although Wife’s separate property and the Parties’ marital property are not directly at issue in this appeal, Exhibits B and C provide an understanding of the trial court’s unwillingness to believe Husband’s testimony concerning his separate property.

follow that Wife took action to dispose of Husband's property. Likewise, Husband's valuations in Exhibits B and C lend support to the trial court's finding that Husband's testimony is not credible.

Second, Husband's argument that he was forced to leave the marital residence with only a few personal effects, and only recovered one pickup truck load full and the items from a storage unit does not provide sufficient evidence to preponderate against the trial court's finding. Wife has rebutted Husband's testimony concerning the recovery of items by stating, in her Motion for Contempt, that "[o]n or about . . . April 28, 2004[,]...[Husband] entered [Wife's] property and absconded various personal items including . . . various tools and equipment." Likewise, Husband's Exhibit 5 lists over sixty items Husband was able to recover from a storage unit. However, because Exhibit 5 is illegibly handwritten this Court cannot ascertain how many items recovered in Exhibit 5 were also listed in Exhibit A to determine the number of items, if any, Husband is claiming remain in Wife's possession.

Finally, we are not compelled by Husband's argument that because Wife mistreated his separate property she placed in a storage unit, she likely disregarded his separate property left at the marital residence. Even if we assume both that Husband's claimed separate property actually existed and that Wife "badly treated" the property contained in the storage unit, we do not find that such evidence preponderates against a finding that Wife did not intentionally dispose of Husband's property at the marital residence.

Given our standard of review and the deference accorded to decisions of trial courts in dividing marital estates and making credibility determinations, we cannot say the evidence preponderates against the division of separate property in this case, nor the trial court's finding that some separate property items claimed by Husband did not exist.

V. CONCLUSION

For the aforementioned reasons, we affirm the decision of the trial court. Costs of this appeal are taxed to Appellant, Timothy William Decent, for which execution may issue if necessary.

ALAN E. HIGHERS, P.J., W.S.